

HOUSE BILL 3134
By Stanley

AN ACT to amend Tennessee Code
Annotated, titles 10 and 33,
relative to persons with mental
illness, serious emotional
disturbance, mental retardation,
and developmental disabilities; the
department of mental health and
developmental disabilities and its
authority; and references to title
33.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 33-1-101, subsection (18), is amended by: (1) deleting the words " senior psychological examiner or certified psychological assistant" and substituting the words "or senior psychological examiner;" (2) deleting the words "masters degreed nurse" and substituting "masters degree in nursing;" (3) deleting the words "two (2) years of full time."

SECTION 2. Tennessee Code Annotated, Section 33-2-403(b), is amended by:

1. Deleting the words "personal care" in subsection 2 and substituting the words "service or support".
2. Deleting the words "A person" in subsections 3 and 4 and substituting the words "An individual".

SECTION 3. Tennessee Code Annotated, Section 33-2-406, is amended by deleting the second sentence of subsection (h) and substituting the following: "A license may be issued only for the premises or services named in the application, must be posted in a conspicuous place at the service or facility,

and may be renewed from year to year. A license is not assignable or transferable except as permitted by Section 4 of this act.

SECTION 4. Tennessee Code Annotated, Section 33-2-418, is amended by adding the following to subsection (b):

(3) Housing for service recipients when the commissioner authorizes the transfer of a license at the same site to a successor provider if, and only if, the license holder's contract with the department is terminated and the transfer of license is necessary to sustain the quality of life of the service recipients.

SECTION 5. Tennessee Code Annotated, Section 33-2-602, is amended by adding the following: "The procedure must ensure that each conflict is resolved within fourteen days."

SECTION 6. Tennessee Code Annotated, Sections 33-2-603 and 604, are amended by deleting them entirely.

SECTION 7. Tennessee Code Annotated, title 33, chapter 3, part 1, is amended by adding the following section:

A licensee or provider under this title may not discourage or preclude a service recipient from exercising the right to religious expression and shall inform each service recipient in a residential environment of this right. A licensee or provider of religious service may provide transportation for a service recipient under this section.

SECTION 8. Tennessee Code Annotated, Section 33-3-102, is amended by transferring the last sentence of subsection (a) to chapter 4, part 1, and by deleting the words "aforementioned rights" and substituting the words "rights afforded by chapters 3 and 4."

SECTION 9. Tennessee Code Annotated, Section 33-3-105, is amended by deleting subsection (5) and substituting the following:

(5) A service recipient moves from one service provider to another and exchange of information is necessary for continuity of service; or

SECTION 10. Tennessee Code Annotated, Section 33-3-106, is amended by deleting the acronym "PAIIM" from the last sentence of subsection (a) and substituting the acronym "PAMII."

SECTION 11. Tennessee Code Annotated, Section 33-3-108, is amended by deleting it and substituting the following:

- (a) Section 33-3-103 does not preclude making reports of harm or granting access to records if making reports of harm or granting access to records are expressly required by: (1) the child abuse reporting law, title 37, chapter 1, part 4; (2) the child sexual abuse reporting law, title 37, chapter 1, part 6; or (3) the adult protective services law, title 71, chapter 6.
- (b) The identity of a person who reports abuse, exploitation, neglect or mistreatment to the department may not be revealed unless a court with jurisdiction so orders for good cause shown.
- (c) Except as may be ordered by a court with jurisdiction or as may be required by the law cited in subsection (a), the identity of any person reporting abuse, exploitation, fraud, neglect or mistreatment shall not be released to any person, other than employees of the department, the abuse registry, or the appropriate district attorney general without the written consent of the person reporting. Such person's identity shall be irrelevant to any civil proceeding and shall, therefore, not be subject to disclosure by order of any court. This does not prohibit the subpoenaing of a person reporting abuse, exploitation, fraud, neglect or mistreatment when deemed necessary by the district attorney general or the department to protect a service recipient who is the subject of a report; provided, that the fact that such person made the report is not disclosed.

SECTION 12. Tennessee Code Annotated, Section 33-3-109, is amended by deleting the second sentence and substituting the following:

Such records shall include only the finding of incompetence or competence, the court order that makes the finding and appoints the fiduciary, and the letters of conservatorship or guardianship; these records may be open for inspection by members of the public.

SECTION 13. Tennessee Code Annotated, Section 33-3-114, is amended by: (1) deleting the word "and" at the end of item (1); (2) deleting the period from the end of item (2) and substituting a semicolon; and (3) adding the following items:

- (3) Judicial proceedings under chapter 8, part 3; and
- (4) Guardianship, conservatorship, and veterans' guardianship proceedings under title 34.

SECTION 14. Tennessee Code Annotated, Section 33-3-120, is amended by deleting the word "secluded" from subsection (f) and substituting the word "isolated."

SECTION 15. Tennessee Code Annotated, Section 33-3-201, is amended by deleting subsection (a)(2) and substituting the following:

- (a)(2) "Counselor" means any psychiatrist, psychologist, licensed psychologist with health service provider designation, certified or licensed marital and family

therapist, certified or licensed professional counselor, certified or licensed social worker, or other professional trained in the field of psychiatry or psychology, or any nonprofessional person acting under guidance or supervision of such professionals.

SECTION 16. Tennessee Code Annotated, Sections 33-3-206 and 208, are amended by deleting the words "physician, psychologist, psychological examiner, senior psychological examiner, certified psychological assistant, behavior analyst, or licensed clinical social worker" from subsection 1 of each section and substituting the words "qualified mental health professional or behavior analyst."

SECTION 17. Tennessee Code Annotated, Section 33-3-218, is amended by deleting subsection (1)(B) and substituting the following:

- (B) a service recipient, due to a diagnosed mental illness or serious emotional disorder, is unable to make an informed decision about application to a hospital or inpatient treatment resource under §33-6-201, requesting discharge under §33-6-206, inpatient mental health treatment, release of information, or getting information, AND

SECTION 18. Tennessee Code Annotated, Section 33-3-219, is amended by: (1) inserting after the words "developmental disability" the words "that is not based solely on a diagnosis of mental illness or serious emotional disturbance" in subsection (1);

(2) deleting subsection (2) and substituting the following:

- (2)(A) a licensed dentist determines that the person lacks capacity to make a decision about a routine dental decision, OR
- (B) a licensed psychologist with health service provider designation determines that the person lacks capacity to make a decision about routine mental health treatment, OR
- (C) a licensed physician determines that the person lacks capacity to make a decision about routine medical or mental health treatment, AND

(3) deleting the words "physician or dentist" from subsections (3), (4), and (6) and substituting the words "physician, psychologist, or dentist."

SECTION 19. Tennessee Code Annotated, Sections 33-3-220 and 221, are amended by deleting the words "physician or dentist" wherever they appear and substituting the words "physician, psychologist, or dentist."

SECTION 20. Tennessee Code Annotated, Section 33-3-802, is amended by deleting the words "developmental disability" and substituting the words "mental retardation;" and by deleting the words "is in need of service" and substituting the

words "meets the standards for involuntary commitment under chapter 6, part 5, or §§33-5-402 and 403."

SECTION 21. Tennessee Code Annotated, Section 33-3-803, is amended by: (1) deleting the words "pursuant to the provisions governing procedures under this title" and substituting the words "under the governing provisions of this title;" and (2) deleting the word "presently;" and (3) deleting the words "a developmental disability" and substituting the words "mental retardation;" and (4) deleting the comma after the word "petitioner" and substituting a semicolon.

SECTION 22. Tennessee Code Annotated, title 33, chapter 4, part 1, is amended by transferring §33-4-102 to chapter 3, part 1, as a subsection of §33-3-101, and by deleting the words "until the person has been discharged but not less than ten (10) years," and substituting the words "for not less than ten (10) years after termination of service."

SECTION 23. Tennessee Code Annotated, Section 33-4-106, is amended by: (1) inserting the words "regardless of the length of the person's absence" at the end of the first sentence between the word "court" and the period in subsection (a) and (2) inserting the following sentence at the end of subsection (a):

A person's absence beyond thirty days does not limit the power of the court to order the person's return to a facility under this section.

SECTION 24. Tennessee Code Annotated, Section 33-5-106, is amended by deleting the first sentence and substituting the following:

A person with a developmental disability, a parent or legal guardian of a child with a developmental disability, a conservator of a person with a developmental disability, the department of children's services on behalf of a person in its legal custody who has a developmental disability, the department of human services on behalf of a person in its legal custody who has a developmental disability, referred to as the "applicant," may apply to the department through its designated entities for services and supports that they provide directly or by contract.

SECTION 25. Tennessee Code Annotated, Section 33-5-108, is amended by: (1) deleting the words "division of developmental disabilities" and "division for developmental disabilities" from the first sentence and substituting the words "division of mental retardation;" (2) deleting the words "developmental disabilities" from the second sentence and substituting the words "mental retardation."

SECTION 26. Tennessee Code Annotated, Section 33-5-208, is amended by: (1) deleting the words "a severe" from the first sentence and substituting the word "severe"; (2) deleting the words "developmental disabilities council"

from the second sentence and substituting the words "council on developmental disabilities;" (3) deleting the words "state disability coalition" from the second sentence and substituting the words "Tennessee Disability Coalition;" (4) deleting the words "community rehabilitation agencies" and substituting the words "Tennessee Network of Community Organizations."

SECTION 27. Tennessee Code Annotated, Section 33-5-304, is amended by deleting the words "the division of developmental disabilities" from the first sentence of subsection (c) and substituting the words "a designee of the commissioner," and by deleting the word "division" from the second sentence of subsection "c" and substituting the words "designee of the commissioner."

SECTION 28. Tennessee Code Annotated, Section 33-5-405, is amended by deleting it and substituting the following: "A judicially committed defendant does not come into the custody of the commissioner until the commissioner determines that the state has an available suitable accommodation and designates a licensed state facility to admit the defendant."

SECTION 29. Tennessee Code Annotated, Section 33-6-103, is amended by deleting the word "adults" from the first sentence of subsection (b) and substituting the word "persons."

SECTION 30. Tennessee Code Annotated, Section 33-6-104, is amended by deleting the words "maximize the service recipients'" from subsection (a) and substituting the words "maximize each service recipient's."

SECTION 31. Tennessee Code Annotated, Section 33-6-105, is amended by deleting its contents and substituting the following:

A person with mental illness or serious emotional disturbance shall not be involuntarily admitted or committed to a state-owned or operated hospital or treatment resource under chapter 6, part 4, of this title unless a mandatory prescreening agent provides one of the certificates for each set of certificates of need required by §§33-6-309, 33-6-404, and 33-6-408.

SECTION 32. Tennessee Code Annotated, Section 33-6-106, is amended by: (1) deleting subsections (b) and (c) and substituting the following:

(b) If the evaluating professional at a hospital or treatment resource is not a mandatory prescreening agent and the hospital or treatment resource is not state-owned or operated, then transportation of and admission of a person to a state-owned or operated hospital or treatment, under chapter 6, part 4, shall not begin until the mandatory prescreening agent completes a certificate of need.

SECTION 33. Tennessee Code Annotated, Section 33-6-107, is amended by: (1) deleting the words "or case management agencies, getting information from other treatment agencies, or release of information to a family member" from subsection (a) and substituting the following: ", other treatment agencies, providers, or a family member, and getting information from other treatment agencies or providers; (2) inserting the following between the words "older" and "to" in the fourth sentence of subsection (b): "and the conservator or surrogate decision maker on behalf of a service recipient who is sixteen (16) years of age or older."

SECTION 34. Tennessee Code Annotated, Section 33-6-201, is amended by deleting the words "mental health care" from subsection (5) and substituting the words "health care."

SECTION 35. Tennessee Code Annotated, Section 33-6-305, is amended by deleting the words "program's emergency room" and substituting the words "treatment resource."

SECTION 36. Tennessee Code Annotated, Section 33-6-309, is amended by: (1) deleting the words "by the mandatory prescreening agent" from the second sentence and (2) adding the following to the end of the section: "Evaluation for admission to a state-owned or operated hospital or treatment resource must conform to §33-6-105."

SECTION 37. Tennessee Code Annotated, Section 33-6-310, is amended by deleting the words "it is" and substituting the words "they are."

SECTION 38. Tennessee Code Annotated, Section 33-6-406, is amended by adding the following at the end of subsection (a):

Transportation to a state-owned or operated hospital or treatment resource may not commence without a certificate of need executed by a mandatory prescreening agent.

SECTION 39. Tennessee Code Annotated, Section 33-6-409, is amended by deleting it.

SECTION 40. Tennessee Code Annotated, Section 33-6-421, is amended by deleting the words "either a psychologist qualified under §33-6-427(a) or a person designated by the commissioner under §33-6-427(b)" and substituting the words "a psychologist qualified under §33-6-427(a)."

SECTION 41. Tennessee Code Annotated, Section 33-6-427, is amended by deleting the content of subsection (b)(1) and substituting the words "Is a qualified mental health professional under §33-1-101."

SECTION 42. Tennessee Code Annotated, Section 33-6-609, is amended by deleting the words "seventy-two hours" in subsection (3) and substituting the words "five business days."

SECTION 43. Tennessee Code Annotated, Section 33-6-616, is amended by deleting the words "seventy-two hours" in subsection (3) and substituting the words "five business days."

SECTION 44. Tennessee Code Annotated, Section 33-6-802, is amended by deleting the words "certified psychological assistant" and substituting the words "clinical nurse specialist in psychiatry, licensed professional counselor, or licensed clinical social worker."

SECTION 45. Tennessee Code Annotated, Section 33-6-804, is amended by deleting the words "certified psychological assistant" from subsection (a) and substituting the words "clinical nurse specialist in psychiatry, licensed professional counselor, or licensed clinical social worker."

SECTION 46. Tennessee Code Annotated, Section 33-6-902, is amended by deleting the phrase "4 or" from the first sentences of both subsections (a) and (b).

SECTION 47. Tennessee Code Annotated, Section 33-6-1002, is amended by deleting the words "doctoral level psychologist with health services designation" from subsection (1)(B)(i)(b) and substituting the words "psychologist designated as a health service provider."

SECTION 48. Tennessee Code Annotated, Section 33-6-1014, is amended by deleting the word "retention" from subsection (c)(4) and substituting the word "remaining."

SECTION 49. Tennessee Code Annotated, Section 33-7-301, is amended by adding the following to the end of paragraph (5) of subsection (b):

- (5) The chief officer of a facility to which a person is committed under subsection (b) shall not admit the person until the facility has available suitable accommodations. If a person is committed to a state facility, the person does not come into the custody of the commissioner until the facility has available suitable accommodations.

SECTION 50. Tennessee Code Annotated, Section 33-7-303, is amended by adding the following paragraph at the end of subsection (c):

- (3) The chief officer of a facility to which a person is committed under subsection (c) shall not admit the person until the facility has available suitable accommodations. If a person is committed to a state facility, the person does

not come into the custody of the commissioner until the facility has available suitable accommodations.

SECTION 51. Tennessee Code Annotated, Section 10-7-504, is amended by: (1) deleting the reference "§33-10-301" from subsection (a)(13)(A) and substituting "§33-1-101(18); (2) deleting the reference "title 33, chapter 10, part 3" from subsection (a)(13)(D) and substituting "§§33-3-206--209."

SECTION 52. This act shall take effect on July 1, 2002, the public welfare requiring it.